

DEC 13 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

RAMON RIVERA-GUTIERREZ, aka
Ramon Gutierrez Rivera,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-71729

Agency No. A14-588-972

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted December 5, 2005^{**}

Before: GOODWIN, TASHIMA, and FISHER, Circuit Judges.

Ramon Rivera-Gutierrez, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") denial of his motion to reopen his removal proceedings, in which he applied for cancellation of removal. We have

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

jurisdiction pursuant to 8 U.S.C. § 1252. Reviewing for abuse of discretion, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), we deny the petition for review.

In its order dismissing Rivera-Gutierrez's appeal, the BIA stated that "there is no evidence that the respondent cannot receive . . . medication or medical attention in Mexico." The order under review repeats that "the respondent has failed to show that medical treatment to treat his diabetic condition is unavailable to him in Mexico." It was within the BIA's discretion to require evidence of the alleged inferior care that Rivera-Gutierrez would receive in Mexico. *See* 8 C.F.R. § 1003.2(c)(1) ("A motion to reopen proceedings shall state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material.").

Absent this evidence, the BIA did not act arbitrarily, irrationally, or contrary to law in concluding that the motion to reopen did not establish Rivera-Gutierrez's prima facie eligibility for cancellation of removal, as its contents do not "reveal[] a reasonable likelihood that the . . . requirements for relief have been satisfied."

Ordonez v. INS, 345 F.3d 777, 785 (9th Cir. 2003) (quoting *In re S-V-*, 22 I. & N. Dec. 1306 (BIA 2000) (en banc)). In these circumstances, the BIA did not abuse its discretion, or commit a due process violation, by denying reopening and a further hearing before the Immigration Judge.

PETITION FOR REVIEW DENIED.